IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 409 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KAMANA SEVA SAHAKARI MANDALI LTD

Versus

MEHSANA DISTRICT CENTRAL CO-OPBANK LTD

Appearance:

MR PK JANI for Petitioner.

NOTICE SERVED for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. This petition has been filed for quashing and setting aside the judgment and order dated 27/9/2000 passed by the Gujarat Co-operative Tribunal, Ahmedabad in

Appeal No.83 of 1995. This Court has already issued notice, which has been served on the respondent-Bank, but no one has appeared on behalf of the respondent-Bank. Heard the learned counsel for the petitioner and perusal of the relevant papers on record.

2. The petitioner is a Co-operative Society and is a member of the respondent-Bank. The petitioner Co-operative Society is engaged in business dealing with the Visnagar Taluka Sahakari Kharid Vechan Sangh Limited and the petitioner Co-operative Society used to purchase fertilizers from the Visnagar Taluka Sahakari Kharid Vechan Sangh Limited on credit upon the guarantee of respondent-Bank. The respondent-Bank was recovering commission from the petitioner cooperative society and the petitioner cooperative society has got a Savings Bank Account with the Kamana Branch of the respondent-Bank. An amount of Rs.1,60,000/- was due to the Visnagar Taluka Sahakari Kharid Vechan Sangh Limited from the petitioner cooperative society. Since the financial position of the petition cooperative society was not good and the petitioner cooperative society requested the respondent-Bank to give some relief. Accordingly, by resolution No.138 dated 14/10/1991, the Board of Directors of the respondent-bank resolved to give an amount of Rs.76,650/- to the Visnagar Taluka Sahakari Kharid Vechan Sangh Limited for the relief to the petitioner society. The respondent-Bank informed the petitioner cooperative society vide letter dated 10/1/1992 that the Board of Directors of the respondent-Bank in it meeting dated 14/10/1991 has decided to give Rs.76,650/- bearing 50% of the amount to the Visnagar Taluka Sahakari Kharid Vechan Sangh Limited for and on behalf of the petitioner cooperative society. On 17/11/1992, the respondent-Bank wrote a letter to the petitioner cooperative society informing that during the audit of accounts of the respondent-Bank for the Year 1991-92, the Special Auditor took objection and ordered the Bank to recover the amount of Rs.76,650/- from the petitioner cooperative society without passing any resolution for recovering of Rs.76,650/-, directly debited the said amount from the accounts of the petitioner cooperative society at the instance of the Manager of the Bank. The petitioner feeling aggrieved by this act on the part of the respondent-Bank preferred Lavad Suit No.622 of 1993 before the Board of Nominees, Mehsana on 19/8/1993. It was contended on behalf of the petitioner that the respondent-Bank has no right to recover the said amount directly from the accounts of the petitioner cooperative society as the said amount was given to the petitioner-society by passing a resolution

by the Board of the Directors of the respondent-Bank and it was given by way of relief. The respondent-Bank filed written statement. After hearing the parties, the Board of Nominees by judgment and order dated 18/1/1995 partly allowed the suit of the petitioner cooperative society and directed the respondent-Bank to reverse the entry of Rs.76,650/- into the account of the plaintiff cooperative society with the respondent-Bank. Feeling aggrieved by the said judgment and order of the Board of Nominees, the respodent-Bank preferred appeal being Appeal No.83 of 1995 before the Gujarat State Co-operative Tribunal, at Ahmedabad on 22/3/1995. The Gujarat State Co-operative Tribunal after hearing both the sides, by judgment and order dated 27/9/2000, allowed the appeal and set aside the judgment and order passed by the Board of Nominees, Mehsana, in Lavad Suit No.622 of 1993. Hence this petition has been filed by the petitioner. It is stated that the judgment and order passed by the Gujarat State Co-operative Tribunal is illegal and is not sustainable in the eye of law.

3. The main contention of the learned advocate for the petitioner is that the amount was given to the petitioner cooperative society by the resolution of the Board of Directors of the Bank, after considering the financial position of the petitioner and the resolution of the Board of Directors of the respondent-Bank has not been cancelled or modified. The respondent-Bank has no authority to recover the entire amount of relief given with interest from the petitioner cooperative society. The respondent-Bank acted on the report of the special auditor and found mistake or fault No.5 and the respondent-Bank on the basis of the report of the special auditor straightway has taken amount of Rs.9,000/- on 1/4/1993 and Rs.8,500/on 26/7/1993 from the Savings Bank Accounts of the petitioner and an amount of Rs.51281/which was given to the petitioner by way of financial aid was taken and withdrawn by the respondent-Bank. Thus, the petitioner had no opportunity to point out to the respondent-Bank that the auditor's report was wrong and, there is no defect or fault as stated at Sr.No.5 in that report. Otherwise, the petitioner would have been in a position to show that the resolution passed by the Board of Directors of the respondent-Bank was perfectly justified in the facts and circumstances of the case. It is also contended by the learned advocate for the petitioner that the Board of Directors of the respondent-Bank has not authorized Bank or any Officer of the Bank to realize the amount from the petitioner directly from the Saving Bank Account of the petitioner. It is also contended that there was no

question before the Tribunal that the resolution of the respondent-Bank granting relief to the petitioner was illegal, unauthorized or against the general policy or against the interest of the respondent-Bank. If there was no question before the Tribunal as to whether the reverse entry as a result of audit report was justified or not. That has not been considered and decided property. The Board of Directors of the respondent-Bank passed a resolution for giving the relief to the petitioner cooperative society and whether the respondent-Bank was entitled for the amount on the basis of audit report or not for this purpose, the respondent-Bank could have filed Lavad Suit before the Board of Nominees for a decree on the basis of general lien under Section 47 of the Gujarat Co-operative Societies Act, 1961, the amount could not have been directly recovered from the petitioner.

4. I have considered the contentions of the learned advocate for the petitioner and it appears that the Tribunal found that the respondent-Bank has got full sympathy with the petitioner cooperative society, but the respondent-Bank passed a resolution which was unauthorized and against the interest of the respondent-Bank and therefore, the special auditor has taken a note in his audit report. The Tribunal held that the conclusion arrived at by the Board of Nominees that the respondent-Bank has wrongly entered the entries against the petitioner cooperative society was not correct hence, that order of the Board of Nominees was illegal. No doubt, the respondent-Bank has general power of lien over the property or the amount of the petitioner in the custody of the respondent-Bank, but as to whether the respondent-Bank is entitled or not. That has not been considered by the Tribunal and the Tribunal accepted on the basis of the adverse report made by the special auditor and that has already been considered by the Board of Nominees. Unless, the respondent-Bank has claimed the power under Section 47 cannot be exercised by the respondent-Bank for realization any amount, unless some decree is passed for the recovery of that amount only on the basis of some adverse report or mistake No.5 of a special auditor, the amount could not have been recovered by the respondent-Bank from the account of the petitioner cooperative society. For that purpose, the resolution is required to be passed by the Board of Directors, as to whether that amount should be recovered in the facts and circumstances, the earlier resolution was passed by the Board of Directors giving the relief to the petitioner in the facts and circumstances adjusting at the relevant time is required to be cancelled. That resolution has

not been passed by the Directors of the respondent - Bank and the respondent-Bank has exercised its powers under Section 47 of the Act which are general and this power could not have been exercised unless, earlier resolution passed by the Board of Directors of the respondent Bank is cancelled or modified. There was no question before the Tribunal as to whether the resolution of the Board of Directors of the respondent-Bank giving the relief to the petitioner cooperative society was illegal, unauthorized or against the general policy or against the interest of the respondent - Bank. It appears that the Tribunal has exceeded its jurisdiction and the question which was not required to be adjudicated by the Tribunal, even without sufficient evidence and material on record has been decided. The main question was before the Tribunal as to whether the reverse entry as a result of the audit report was justified or not that has not been considered and decided. The reverse entry could have been considered by the Board of Directors was required to be decided. The Board of Directors of the respondent-Bank, looking to the financial condition of the petitioner at the relevant time gave relief to the petitioner but in the absence of any resolution passed by the respondent-Bank cancelling earlier resolution it was not proper for the Tribunal to give any findings in their respect.

5. Considering the facts and circumstances of the case, I think it proper that the various questions raised before this Court have not been considered by the Tribunal and these questions are required to be considered and decided by the Tribunal in the light of the material on record. I think it proper that the matter should be remanded to the Tribunal for decision afresh. Thus, this petition deserves to be allowed.

6. Accordingly, this petition is allowed and the impugned judgment and order of the Tribunal dated 27/9/2000 is hereby quashed and set aside and the matter is directed to be remanded to the Tribunal for considering and deciding afresh after giving reasonable opportunity of hearing to the parties concerned so far as possible within three months from the date of production of the copy of this order or from the date of the receipt of the writ of this order. Rule is made absolute to the aforesaid extent.

(Kundan Singh,J.)

(vrp)